

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: McKenzie Dean	Team: Squad #16	CCRB Case #: 202106429	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/17/2021 5:10 PM	Location of Incident: 2082 Rockaway Parkway	18 Mo. SOL 4/17/2023	Precinct: 69
Date/Time CV Reported Sun, 10/17/2021 9:18 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/22/2021 3:20 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Patrick Gourlay	00244	951780	069 PCT
2. PO Camil Jezewski	23065	969133	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Brian Henn	19752	950580	069 PCT
2. PO Gunvinder Singh	16799	961289	069 PCT
3. SGT Dana Martillo	02415	945954	069 PCT
4. PO Darren Zhumi	11346	966410	069 PCT
5. PO Conor Cunningham	00822	966011	069 PCT
6. PO Michael Magnante	23112	969186	069 PCT
7. PO Matthew Woods	21755	929581	069 PCT
8. PO Nataly Sampedro	26822	969350	069 PCT
9. PO Evan Bogucki	01837	970420	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Patrick Gourlay	Abuse: Police Officer Patrick Gourlay threatened § 87(2)(b) with the use of force.	
B. PO Patrick Gourlay	Force: Police Officer Patrick Gourlay restricted § 87(2)(b) breathing.	
C. PO Camil Jezewski	Abuse: Police Officer Camil Jezewski searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D. PO Patrick Gourlay	Abuse: Police Officer Patrick Gourlay searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	

### Case Summary

On October 17<sup>th</sup>, 2021, Sergeant Dana Martillo, of the 69<sup>th</sup> Precinct, filed this complaint with IAB via telephone on behalf of § 87(2)(b). The complaint was received at the CCRB on October 22, 2021.

On October 17<sup>th</sup>, 2021, at approximately 5:10 PM, § 87(2)(b) car was in the parking lot of Popeyes located at 2082 Rockaway Parkway in Brooklyn. § 87(2)(b) wife, § 87(2)(b) was in the passenger seat and their children, nine-month-old § 87(2)(b) five-year-old § 87(2)(b) and eight-year-old § 87(2)(b) were in the backseat. § 87(2)(b) was walking toward Popeye's when Police Officer Patrick Gourley and Police Officer Camil Jezewski, both of the 69<sup>th</sup> Precinct, pulled up behind him in a police vehicle and told him to get back in his car, which he refused to do. Police Officer Gourley pointed his taser at § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) gave a sweatshirt he had been holding to § 87(2)(b) who was still inside the vehicle. The officers handcuffed § 87(2)(b) and while they did so, Police Officer Gourley and § 87(2)(b) held onto § 87(2)(b) sweatshirt, causing § 87(2)(b) breathing to be restricted (**Allegation B: Force**, § 87(2)(g) Police Officer Jezewski reached into § 87(2)(b) vehicle to retrieve the sweatshirt from § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g) § 87(2)(b).

Police Officer Conor Cunningham, Police Officer Michael Magnante, Police Officer Matthew Woods, Sergeant Dana Martillo, Police Officer Evan Bogucki, Police Officer Gunvinder Singh, Police Officer Nataly Sampedro, Police Officer Darren Zhumi, and Police Officer Brian Henn, also of the 69<sup>th</sup> Precinct, responded. Police Officer Zhumi and Police Officer Henn transported § 87(2)(b) to the stationhouse in a patrol vehicle. Police Officer Gourlay searched § 87(2)(b) vehicle (**Allegation D: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was arrested. This case was originally assigned to former Investigator Joseph Hennessy, and upon their re-departure from the CCRB the case was reassigned to Investigator McKenzie Dean on May 12, 2022.

Body-worn camera (BWC) footage was received from the cameras of Police Officer Gourlay, Police Officer Jezewski, Police Officer Zhumi, Police Officer Henn, Police Officer Cunningham, Police Officer Magnante, Sergeant Martillo, Police Officer Woods, Police Officer Sampedro, Police Officer Bogucki, and Police Officer Singh (**BR 03-BR 15**).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Patrick Gourlay threatened § 87(2)(b) with the use of force.**

It is undisputed that Police Officer Gourlay and Police Officer Jezewski pulled into the Popeye's parking lot behind § 87(2)(b) parked vehicle. The officers exited their vehicle and Police Officer Gourlay instructed § 87(2)(b) to get back into his car. § 87(2)(b) walked around the front of his vehicle to the passenger side, where § 87(2)(b) was sitting. § 87(2)(b) handed a jacket to § 87(2)(b). Police Officer Gourlay approached § 87(2)(b) vehicle, took his taser out, and instructed § 87(2)(b) to get back into his vehicle. § 87(2)(b) did not comply, and Police Officer Gourlay grabbed § 87(2)(b) arms and held them behind his back.

§ 87(2)(b) stated (**BR 19**) his vehicle was parked in the Popeye's parking lot and was not being operated when the officers pulled into the lot. § 87(2)(b) had not committed any vehicle infractions. When the officers approached, § 87(2)(b) walked around the vehicle, gave his jacket to § 87(2)(b) and put his hands behind his back. Police Officer Gourlay took his taser out and instructed § 87(2)(b) to get into the vehicle.

The CCRB was unable to obtain a statement from § 87(2)(b).

Police Officer Gourlay and Police Officer Jezewski (**BR 20; BR 21**) stated they observed § 87(2)(b) fail to activate his turn signal and make an improper turn, so they initiated a vehicle stop.

Police Officer Gourlay stated he activated the patrol vehicle's turret lights seconds after witnessing § 87(2)(b) improper turn, but he did not recall if he activated his siren, though he stated he likely did. Police Officer Jezewski stated the officers activated both the lights and sirens. § 87(2)(b) pulled into a parking lot and exited his vehicle. Police Officer Gourlay instructed § 87(2)(b) to get back into his vehicle, which he refused to do. § 87(2)(b) ran around the front of his vehicle, opened the front passenger door, took his jacket off, and threw it inside.

Police Officer Gourlay stated that while § 87(2)(b) was walking around the vehicle, he unholstered his taser and pointed it at him for the officers' safety. Police Officer Gourlay pointed his taser at § 87(2)(b) so he could stop him if he tried to flee or attack the officers. Police Officer Gourlay was concerned about § 87(2)(b) attacking him because of the way § 87(2)(b) exited his vehicle, which he believed was unusual. When Police Officer Gourlay saw that § 87(2)(b) was near other civilians, he holstered his taser. Police Officer Gourlay was also concerned about a possibility of a weapon in the jacket § 87(2)(b) put inside his vehicle.

At 00:50 into Police Officer Gourlay's BWC video (BR 03), he exits his vehicle and § 87(2)(b) is standing near the rear driver's side of his car. § 87(2)(b) walks around front of his vehicle and Police Officer Gourlay says, "Get back in your car. Guy, get back in your car." Police Officer Gourlay walks towards § 87(2)(b) as § 87(2)(b) is taking off his jacket. At 01:05 into the video, Police Officer Gourlay holds his taser in his left hand, points it at § 87(2)(b) and says, "Get back in your car." Police Officer Gourlay lowers his taser and § 87(2)(b) hands his jacket § 87(2)(b) who is standing in the doorway of the front passenger seat. Police Officer Gourlay says, "Get back in your car. I'm just trying to talk to you."

Patrol Guide Procedure 221-08 (BR 23) states that conducted electrical weapons (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present. Active resistance includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

§ 87(2)(g) in the moment Police Officer Gourlay pointed his taser at § 87(2)(b) § 87(2)(b) was simply refusing to comply with commands to get back into his vehicle and walking away from the officers, he was not exhibiting active resistance. Furthermore, in taking these actions, § 87(2)(b) had not exhibited active aggression at any point, nor did he indicate in any way that he may injure himself or others. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Allegation (B) Force: Police Officer Patrick Gourlay restricted § 87(2)(b) breathing.**

It is undisputed that Police Officer Gourlay and Police Officer Jezewski handcuffed § 87(2)(b) as the front of § 87(2)(b) body was up against the rear passenger side of his vehicle. The window was open and § 87(2)(b) son, § 87(2)(b) was in the backseat.

§ 87(2)(b) stated that as the officers were handcuffing him, Police Officer Gourlay held onto the hood and the back of his sweatshirt. § 87(2)(b) who was in the backseat of § 87(2)(b) vehicle, held onto the string around the neck of § 87(2)(b) hoodie. Police Officer Gourlay also pulled the string, causing § 87(2)(b) breathing to be restricted.

Police Officer Gourlay stated he grabbed one of § 87(2)(b) arms while Police Officer Jezewski grabbed the other arm and the officers handcuffed him. Police Officer Gourlay did not recall if § 87(2)(b) complained of having difficulty breathing at any point. Police Officer Gourlay denied making physical contact with § 87(2)(b) neck and stated he did not pull a string around the neck of his sweatshirt.

Police Officer Jezewski stated that as he and Police Officer Gourlay were handcuffing § 87(2)(b) one of § 87(2)(b) children was pulling the strings on § 87(2)(b) hooded sweatshirt

through the open car window. § 87(2)(b) did not complain of difficulty breathing at any point and Police Officer Gourlay did not use force against § 87(2)(b) neck.

At 01:30 into Police Officer Gourlay's BWC video (BR 03), the officers attempt to handcuff § 87(2)(b) as § 87(2)(b) attempts to interfere by grabbing § 87(2)(b) arm. At 02:20 into the video, Police Officer Gourlay is grabbing the back of § 87(2)(b) sweatshirt near the hood. At 04:20 into the video, § 87(2)(b) is holding the two strings around the neck of § 87(2)(b) sweatshirt and is pulling § 87(2)(b) toward himself and away from the officers as § 87(2)(b) is facing him. § 87(2)(b) breathing does not appear to be labored or restricted at any point and § 87(2)(b) is yelling at the officers the entire time § 87(2)(b) is holding onto the strings of his sweatshirt. The footage does not depict Police Officer Gourlay pulling the string of § 87(2)(b) sweatshirt at any point. At 03:20 into Police Officer Jezewski's BWC video (BR 06), § 87(2)(b) says, "My son is choking me." 04:30 into Police Officer Jezewski's BWC video, § 87(2)(b) continues to hold onto the strings of § 87(2)(b) sweatshirt and § 87(2)(b) breathing still does not appear to be restricted.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Camil Jezewski searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

**Allegation (D) Abuse of Authority: Police Officer Patrick Gourlay searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

§ 87(2)(b) made no mention of Police Officer Jezewski reaching into his vehicle to retrieve his jacket or of Police Officer Gourlay searching his vehicle after he was transported from the scene, however BWC footage depicts both occurrences.

Police Officer Jezewski stated that after placing § 87(2)(b) in the backseat of the police vehicle, he retrieved the jacket § 87(2)(b) threw into his vehicle because he was concerned about what may have been inside it and about why § 87(2)(b) tried to get rid of it so quickly. Police Officer Jezewski was specifically concerned about there being "maybe a weapon, maybe drugs" inside the jacket. Police Officer Jezewski stated he also retrieved that jacket because it was on § 87(2)(b) person initially, and the officers needed to make sure that everything that was on § 87(2)(b) person was with him during the arrest.

Police Officer Gourlay stated he told Police Officer Jezewski to retrieve § 87(2)(b) jacket from the vehicle because he was concerned there may have been contraband inside. Police Officer Gourlay specifically wanted to ensure there were no weapons in the jacket because there were children in § 87(2)(b) car. Police Officer Gourlay was concerned about the possibility of a weapon because § 87(2)(b) jumped out of his car, took his jacket off, ran from the officers, and threw the jacket on the passenger seat. Police Officer Gourlay was also concerned about this because the incident location was a high crime area with a prevalence of robberies and gun violence. After § 87(2)(b) was in custody, Police Officer Gourlay searched his vehicle for contraband incident to § 87(2)(b) lawful arrest for officer safety and to ensure there were no firearms around § 87(2)(b) children. Police Officer Gourlay specifically searched the backseat of the vehicle for weapons, which did not yield any weapons or contraband.

At 04:05 and 04:35 into Police Officer Jezewski's BWC video (BR 06), Police Officer Gourlay instructs him to get the jacket § 87(2)(b) threw into the car. Police Officer Jezewski reaches into the front passenger side of the vehicle and attempts to grab the jacket from § 87(2)(b) three times, but she pulls it away from him each time. At 05:05 into the video, Police Officer Henn arrives on scene, reaches into the vehicle, and grabs the jacket from § 87(2)(b)

At 11:00 into Police Officer Gourlay's BWC video (BR 03), he explains to § 87(2)(b) that he was just trying to speak to § 87(2)(b) about the turn he made and says that people cannot



“jump out of cars like that.” Police Officer Gourlay asks § 87(2)(b) “When he threw that jacket back in there, was there a firearm? Anything I need to know about?” § 87(2)(b) says § 87(2)(b) does not have a gun. Police Officer Gourlay asks § 87(2)(b) if he can check the vehicle and she tells him to go ahead. At 11:55, Police Officer Gourlay searches the front driver seat, at 12:26 he searches the rear driver seat, and at 13:03 he searches the front passenger seat.

§ 14-173 of the NYC Administrative Code (BR 27) states that officers must use plain and simple language to communicate the request to search, the subject must “voluntarily, knowingly, and intelligently consent,” and the officer must explain that such search will not be conducted if such person refuses to provide consent to such search.

In People v. Belton, 55 N.Y.2d 49 (BR 30), the court held that a valid arrest for a crime authorizes a warrantless search, for a reasonable time and to a reasonable extent, of a vehicle which the arrested person is driving when the circumstances give reason to believe that the vehicle or its visible contents may be related to the crime for which the arrest is being made (as possibly containing contraband or as having been used in the commission of the crime) or there is reason to believe that a weapon may be discovered or access to means of escape thwarted.

In People v. Carvey, 89 N.Y.2d 707 (BR 29) the court held that an officer’s intrusion into a suspect’s vehicle based on the likelihood of a weapon in the car must be substantial and the danger to the officer’s safety “actual and specific.” The court emphasized that a reasonable suspicion alone will not suffice as a justification for the intrusion.

Although Police Officer Gourlay did not mention § 87(2)(b) consent as a justification for searching § 87(2)(b) vehicle, this is depicted in BWC footage. However, in Police Officer Gourlay’s request for § 87(2)(b) consent, he did not explain that the search would not be conducted if § 87(2)(b) refused to provide her consent. § 87(2)(g)

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Moreover, given that § 87(2)(b) was arrested for two VTL violations (improper right turn, and failure to signal) at the time his vehicle was searched, a search of his vehicle would not have yielded contents related to the crime for his arrest due to the nature of his charges. Additionally, at the time Police Officer Jezewski reached into the vehicle, § 87(2)(b) was outside handcuffed, and at the time Police Officer Gourlay searched the vehicle, § 87(2)(b) had already been removed from the scene. § 87(2)(g)

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Furthermore, although Police Officer Jezewski cited a concern about the possibility of a weapon inside the vehicle as the reason for retrieving § 87(2)(b) jacket, he also cited a concern about the possibility of drugs. In addition, aside from § 87(2)(b) furtive movements, neither Police Officer Jezewski nor Police Officer Gourlay were able to articulate any additional factors that contributed to their concerns about a weapon and BWC footage did not shed light on any additional factors. § 87(2)(g)

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#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 17).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 25).
- Police Officer Gourlay has been a member of service for 10 years and has been a subject in five cases and 10 allegations, none of which were substantiated. § 87(2)(g)

§ 87(2)(g)

- Police Officer Jezewski has been a member of service for two years and this is the first CCRB complaint in which he has been named a subject.

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- On May 23, 2022, a Notice of Claim query was sent to the NYC Comptroller's office. To date, the results are pending.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 16

Investigator:	<u>Inv. Dean</u>	<u>Inv. Dean</u>	<u>6/13/22</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Patrick Yu</u>	<u>IM Patrick Yu</u>	<u>06/14/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date